

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

DENNIS LEWIS, <i>et. al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 05-1008
	)	
JOHN MICHAEL STRAKA <i>et al.</i> ;	)	
	)	
Defendants.	)	

**REPORT AND PETITION**

COME NOW Plaintiffs Dennis Lewis, *et al.*, by one of their attorneys, Joseph W. Phebus of the law firm of Phebus & Koester, and report to the court as to the receipt of settlement funds, the activities of the administrator, First Class, Inc., the processing of claim forms, the calculation of the proposed distribution, and petitions the court for an order authorizing distribution of the settlement funds.

A. Settlement funds

1. On October 21, 2008, the settlement funds from CIB Marine Bancshares, Inc., were placed in escrow account with the Marshall & Ilsley Trust Company N.A., Madison branch, ("M&I Bank") with the funds deposited in a Marshall Government Money Market Fund, which paid interest of \$5,367.69 and had an administrative fee of \$2,500.
2. The settlement funds were wire transferred and deposited in a checking account at MB Financial Bank, N.A., 6111 North River Road, Rosemont, Illinois under control of First Class, Inc., as follows:
  - a. On December 30, 2008, \$3,118,000.00 representing the principal of the funds deposited at Marshall & Ilsley Trust Company N.A. was received.
  - b. On January 6, 2009, a check for \$1,300,000.00 was received at First Class, Inc. from Progressive Casualty Insurance Company. The check was deposited at MB Financial Bank, N.A. on January 7, 2009.

- c. The total interest received from the Marshall & Ilsley Trust Company N.A. escrow account was \$5,376.69. Of the interest received, only \$2,876.69 was transferred to MB Financial, N.A. as the Marshall & Ilsley administrative fee of \$2,500.00 was deducted prior to the transfer of the interest. The interest was wired to MB Financial Bank, N.A. in two parts, \$578.64 on December 30, 2008 and \$2,298.05 on January 6, 2009.
3. In order to secure complete FDIC insurance coverage and to avoid further administrative fees, the settlement funds received by First Class, Inc. are in a non-interest bearing checking account.

B. Partial distribution of settlement funds to date:

1. As of this date, settlement funds have been distributed to various class counsel for their fees and expenses as follows:

<b>Class Counsel</b>	<b>Fees</b>	<b>Expenses</b>
Phebus & Koester	\$753,385.51	\$19,580.85
Lawton & Cates	\$101,353.34	\$11,736.50
The Leiter Group	\$507,628.32	\$12,869.08
Lawrence Walner & Associates	\$64,891.60	\$0.00
The Patterson Law Firm	\$45,249.18	\$0.00

2. As of this date, there is owed to the attorneys collectively the sum of \$1,792.23 for interest earned prior to the distribution set forth in paragraph 1 above.

C. Class representatives' fees to be paid:

<b>Class representative</b>	<b>Fees</b>	<b>Expenses</b>
Dennis Lewis	\$3,000.00	\$0.00
Mark Selvaggio	\$3,000.00	\$12,000.00
James Schuett	\$3,000.00	\$12,000.00
James Hausman	\$3,000.00	\$12,000.00
Steve Alton	\$3,000.00	\$12,000.00
Patrick Newman	\$3,000.00	\$12,000.00
Gary Nevins	\$1,000.00	\$0.00
Doris Alton	\$1,000.00	\$0.00
Bernie Myler	\$1,000.00	\$0.00
Steven Morgan	\$1,000.00	\$0.00

D. Claims

1. As of February 25, 2009, 331 claim forms have been accepted and approved and 4 claim forms have been accepted and questioned. Class

counsel and the claims administrator request determination by the court as to whether or not the questioned claim forms should be approved, and if so, as to how many shares. (Several class members have submitted multiple approved claim forms with each form representing different shares of stock.)

2. The total number of shares of stock, including those where the claim forms are questioned, represented is 4,094,710. The questioned shares are included for the purpose of calculation of the initial distribution as to approved claims.
3. The questioned claim forms are as follows:

<b>Claim number</b>	<b>Claimant</b>	<b>Number of shares</b>	<b>Amount of distribution if approved</b>
97471254	Marine Bank Springfield	598,384	\$378,413.38
97471253	Marine Bank Springfield	125,000*	(\$79,049.00) included in amount for claim form 97470691
97470691	John Hadley and Mary Lydia Hadley JT TEN	290,000*	\$183,393.74
97470679	John Hadley and Mary Lydia Hadley JT TEN	192,313	\$121,617.24
<b>Total amount of questioned claim forms</b>			<b>\$683,424.36</b>

4. \*The 125,000 shares represented by Marine Bank of Springfield's claim form 97471253 are included in the 290,000 shares represented by John and Mary Lydia Hadley's claim form 97470691. Thus, not only are both claim forms questioned, but both claim forms assert a claim as to the same 125,000 shares.
5. The claims administrator questions claim forms 97470691 and 97470679 in that *inter alia* class counsel cannot confirm the purchase.
6. The claims administrator questions claim forms 97471254 and 97471253 in that *inter alia* class counsel cannot confirm the purchase.
7. John Hadley and Mary Lydia Hadley have filed a Chapter 11 petition in bankruptcy in the United States District Court for the Central District of Illinois, cause no. 04-92665, and Nancy Gargula has been appointed trustee and Sabrina Petesch is the trustee's attorney. The

claims administrator has approved the following claim forms submitted by John Hadley and Mary Lydia Hadley:

<b>Claim number</b>	<b>Claimant</b>	<b>Number of shares</b>	<b>Amount of distribution</b>
97471284	John Hadley and Mary Lydia Hadley JT TEN	7,950	\$5,466.59
97471285	John Hadley and Mary Lydia Hadley JT TEN	3,900	\$2,852.90
97471286	John Hadley and Mary Lydia Hadley JT TEN	2,400	\$1,843.41
97471287	John Hadley and Mary Lydia Hadley JT TEN	12,000	\$8,778.15
97471288	John Hadley and Mary Lydia Hadley JT TEN	500	\$343.81

Accordingly, the claims administrator requests the court specify to whom the payment for these approved claims should be made to as to these five claims.

8. Class counsel proposes:

- A. That distribution at this time of the approved claim forms based on the presently calculated amounts be authorized as to all claim forms except those set forth in paragraph 3 above and that the court direct that First Class continue to hold the funds represented by the questioned claim forms (\$683,424.36) until the court has entered a final no longer appealable order as to the distribution of the escrowed proceeds. (To the extent any of the questioned claim forms are disallowed, the proceeds will be allocated to the approved claim forms and a further distribution made.)
- B. As to the questioned claim forms, the court conduct an evidentiary hearing and considering each claim form separately determine to what extent, if any, it should be approved. After the court's order in that regard is final and no longer appealable, claims administrator will calculate the final distribution to the entire then approved class and petition the court for approval to make a final distribution.

9. Expenses of administration:

Attached hereto as Exhibit A is a report from First Class, Inc., detailing its activities and its fees and expenses.

10. Funds available for distribution to class members

Total principal received .....	\$4,418,000.00
Total interest received.....	<u>\$5,376.69</u>
Total received.....	\$4,423,376.69

Less Marshall & Ilsley administrative fee.....	\$2,500.00
Less class counsel's fees.....	\$1,472,507.95
Less class counsel's expenses.....	\$44,186.43
Less class counsel's share of interest.....	\$1,792.23
Less class representatives' fees and expenses .....	\$82,000.00
Less First Class' fees and expenses not included in class counsel's expenses.....	\$12,906.57
Less total deductions.....	<u>\$1,615,893.18</u>

Funds for distribution to class (including proposed funds to be held in escrow .....	<u>\$2,807,483.51</u>
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11. Approved claim forms and proposed distribution:

Attached hereto as Exhibit B is a spreadsheet listing the approved claim forms by claim number, claimants, the number of shares, the price for weighting purposes, and the proposed amount of distribution including all interest received to date.

12. Hadley and Marine Bank of Springfield questioned claim forms:

Attached hereto as Exhibit C is a spreadsheet listing the questioned claim forms and materials that have been submitted to the claims administrator by John Hadley and Mary Lydia Hadley and by the Marine Bank of Springfield as to the questioned claim forms.

WHEREFORE plaintiffs pray:

1. The distribution of fees, expenses and interest set forth above to class counsel be approved;
2. The distribution of fees and expenses to class representatives as set forth above be approved;
3. The distribution of fees and expenses to the class administrator as set forth above be approved;

4. The court order that the funds allocable to questioned claims be held in escrow by First Class, Inc., until a final no longer appealable order has been entered by this court determining the status of the questioned claims;

5. Subject to the holding in escrow of the funds allocated to questioned claims, the funds for distribution to the class be distributed at this time.

DENNIS LEWIS, *et al.*, Plaintiffs, by one of their attorneys, Joseph W. Phebus of the law firm PHEBUS & KOESTER

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*Courtesy copy: The Honorable Lynn Adelman*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of February, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Samuel Benjamin Zabek**  
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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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